NOMINATION OF ALFRED E. ECKES, JR.

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

NOMINATION OF ALFRED E. ECKES, JR., TO BE A COMMISSIONER OF THE U.S. INTERNATIONAL TRADE COMMISSION

SEPTEMBER 15, 1981

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NOMINATION OF ALFRED ECKES, JR., TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION

TUESDAY, SEPTEMBER 15, 1981

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to call, at 10:35 a.m., in room 2221, Dirksen Senate Office Building, Hon. Malcolm Wallop presiding.

Present: Senators Wallop, Grassley, Armstrong, Long, and Moynihan.

[The committee press release follows:]

Press Release No. 81-160

P R E S S R E L E A S E

FOR IMMEDIATE RELEASE
SEPTEMBER 10, 1981

UNITED STATES SENATE
COMMITTEE ON FINANCE
2227 DIRKSEN SENATE OFFICE BLDG.

FINANCE COMMITTEE SCHEDULES HEARING ON THE NOMINATION OF ALFRED E. ECKES, JR. TO BE A COMMISSIONER OF THE U. S. INTERNATIONAL TRADE COMMISSION

Robert J. Dole, Chairman of the Committee on Finance, announced today that the committee has scheduled a hearing on the nomination of Alfred E. Eckes, Jr. to be a Commissioner of the United States International Trade Commission.

The hearing is scheduled for Tuesday, September 15, 1981 beginning at 9:30 a.m. It will be held in Room 2221, Dirksen Senate Office Building.

Immediately following the hearing, the committee will meet in executive session. In addition to other matters already scheduled, the nomination of Mr. Eckes will be considered.

Written Testimony--The committee will be pleased to review written testimony from those persons or organizations who wish to submit statements on the nomination for the record. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length and mailed with five copies to be received by September 14, 1981, to Robert E. Lighthizer, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.

P.R. #81-160

Senator WALLOP. The committee will come to order.

It is the intention of the Chair to open the hearing on the nomination before the committee. If Senator Long has not arrived by the time the routine questioning has been directed to the nominee, we will recess until he gets here because he does have some questions.

It is a very great pleasure for me to welcome to the Committee on Finance Alfred M. Eckes, Jr., who has been nominated to be a Commissioner of the U.S. International Trade Commission.

We are delighted to have you here this morning, Mr. Eckes.

Senator WALLOP. Mr. Eckes, do you know of any reason that you are not qualified to hold the position for which you have been nominated?

Mr. ECKES. None, Senator Wallop.

Senator WALLOP. Have you reviewed the conflict of interest laws and regulations with the committee's chief counsel?

Mr. ECKES. Yes, I have.

Senator WALLOP. Do you have a statement that you wish to make?

I believe all the members of the committee have been provided with biographical material on the nominee. The financial disclosure form of the nominee has been reviewed, as well as the materials which were filed with the Office of Government Ethics. The Chairman has informed me that he is satisfied there are no problems in this area.

The Director of the Office of Government Ethics has forwarded a letter to the committee proving the nominee's compliance with the Ethics in Government Act, and that letter will be made part of the record.

[The letter from Office of Government Ethics follows:]

OFFICE OF GOVERNMENT ETHICS,
OFFICE OF PERSONNEL MANAGEMENT,
Washington, D.C., July 17, 1981.

Hon. ROBERT DOLE,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Alfred E. Eckes, Jr., who has been nominated by President Reagan for the position of Commissioner of the U.S. International Trade Commission.

We have reviewed the report and have also obtained advice from the U.S. International Trade Commission concerning any possible conflict in light of the agency's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Eckes is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

J. JACKSON WALTER, *Director.*

STATEMENT OF ALFRED M. ECKES, JR., U.S. INTERNATIONAL TRADE COMMISSION NOMINEE

Mr. ECKES. I have no prepared statement, Senator, but it is a great honor for me to appear here before the committee to seek confirmation of a nomination to the International Trade Commission. I appreciate in particular your taking the time, along with Senators Armstrong, Grassley, Long, and Moynihan to participate in the hearing.

I would be delighted to respond to whatever other questions you have at this time.

Senator WALLOP. Senator Grassley?

Senator GRASSLEY. The only question I wanted to ask was whether you have any philosophical objections to the imposition of countervailing duties. If you do have the objections, what actions would you undertake to avoid that end result? Do you have any philosophical objections?

Mr. ECKES. Senator, I have had a chance to study the law in general terms, and know of its applications. I am inclined and pledge to apply the law as it is written by Congress. I have no philosophical objections to providing duties where there is material injury to domestic firms by reason of imports, which are subsidized and dumped, because these are instances of unfair trade.

Senator WALLOP. I have three questions which can be answered for the record from Senator Dole. I will read them, and then I will provide you with a copy of them for your answers.

Mr. ECKES. All right.

Senator WALLOP. The first question is: Mr. Eckes, in reading over the biographical material which you have provided to the committee, it appears that in your international trade background you have not had much experience in the agricultural sector. Do you feel that you will be able to develop the expertise necessary to deal with the peculiarities of the agricultural issues which face the Commission?

Have you reviewed the statutes, such as section 22 of the Agricultural Adjustment Act under which agricultural issues arise? Do you understand the functioning of those statutes?

The second question: As you know the Commission has a very unique role to play under our trade statutes. Do you understand its unique position between the Congress and the President, and the independent status it has? Would you have any problem taking the steps which might be necessary to maintain the independent nature of the Commission?

The third question: One of the problems which all independent agencies must face is budgetary restraint. Are you prepared to take the steps which are necessary to insure that the Commission performs only its essential functions in the most efficient manner?

I will provide those three questions for you, and you can respond to them in time.

I just have one personal question, and then I have questions from Senator Matsunaga.

With regard to agricultural issues, those are among the stickiest, I think, that this country faces, especially with countries like Japan, and with the European Common Market which have highly protective and restrictive agricultural trade policies. It has always been a position of mine that it is one thing for the United States to be a leader, and we should, but I have a strong feeling that we should not be a leader where nobody follows.

There is no point in carrying a guidon over the hill and being the only one at the top. The American farmers have been used to that as a virtual pastime in international trade policies. This is especially true with the kinds of things that are not produced, for example, in the European markets—the kind of American beef that could be

sold over there. Japan has protective mechanisms surrounding citrus and other importation from America that are nothing short of obscene if you are going to have a free trade policy.

I wish you could just sort of comment generally on that concept.

Mr. ECKES. Senator, speaking as a matter of personal philosophy, I am in full agreement that our trade ought to be reciprocal in nature. I think that where foreign nations treat us unfairly, we have every right to retaliate.

Retaliation is the responsibility of the U.S. Trade Representative under section 301. In my possible duties with the International Trade Commission, we would be applying the law as it is written. I doubt I personally would have a chance to become involved in the policy issues you raised.

Senator WALLOP. Let me suggest to you that your personal involvement may not be so much in an official capacity as in the capacity of somebody who is there in trade matters representing the United States. A philosophical expression is not without merit, and if you have a choice of saying, "Well, what those guys are doing with the law," or "they have not done anything with the law, so you are all right."

I am saying that there is a general obligation for people in world trade matters to accommodate all of the capabilities in world trade. So that you do have, so that you do have presence, and that presence is of some value in reflecting a philosophy, and that is what I would hope you that might feel compelled to do from time to time on behalf of American producers, not only agricultural but wherever we may have problems or face artificial restraint.

Mr. ECKES. I appreciate what you are saying, Senator. My only concern was that if I were to speak out on that, some of the Commission decisions could be appealed to the Customs Court, it might pose legal problems.

Commissioners don't make policy, though they obviously have personal views. I think we are in general agreement on that level.

Senator WALLOP. True, but even Trade Commissioners drink cocktails from time to time, and I can't believe that they do it in total silence, even with Perrier.

Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I have to go to the Judiciary Committee for the Sandra O'Connor nomination. I have two things that I wanted to deal with in the executive session. Could I ask unanimous consent, first of all, to insert a statement in the record on the Debt Collection Act.

Senator WALLOP. Without objection, so ordered.

Senator GRASSLEY. Second, I would like to be recorded as voting no on the increase in the ceiling of the public debt.

Senator WALLOP. I will pass that on to the chairman.

Senator GRASSLEY. I want to vote yes on the Debt Collection Act.

Senator WALLOP. Let me read Senator Matsunaga's statement and questions.

Congress has directed the International Trade Commission to study the feasibility of the harmonized tariff system. Before committing the United States to adopting the harmonized tariff structure, Congress wanted to know its ramifications. The harmonized

system has been drafted in Europe, but interested parties are establishing interpretations which may later be binding.

The United States has not involved itself in the policy implications of the harmonized system, yet the present and past administrations have, as I understand it, favored United States adoption of the harmonized system.

I, as one member of this committee, am very much concerned about the need to retain the utmost flexibility and protecting American trade concerns. Even if we do adopt the harmonized system, we should not lock ourselves into the formulation without regard for American interest, especially since American officials have had no input into the policy formulation.

Do you share this concern? In any event, will you address the point in the ITC's report to the Congress?

Mr. ECKES. With respect to the harmonized code, Senator, I am generally familiar with its provisions, though not with its technical details. We know section 608 of the Trade Act of 1974 authorized the Commission to provide technical assistance for the U.S. Government to participate in these discussions. It is my understanding that these technical discussions are near completion, and that a decision will have to be made at some point by the administration whether or not to send it up for congressional consideration.

The harmonized code is potentially a very important item for U.S. traders, importers, and exporters, because it would simplify in a very major way the very basis for our tariff schedule—how goods are categorized and described. Perhaps it would even involve some changes in the tariff schedule. It is a very significant item, but it would probably come up for full congressional consideration, I would suppose, in 1984 or 1985 if a decision is made to go forward.

I would pledge to provide every assistance as a commissioner, if confirmed, to the technical experts, and I would also pledge to provide information of the policy significance, because our role is that of a factfinding agency without taking a position on policy issues. I would be prepared to do whatever is possible and feasible to make sure that Members of Congress, particularly the Senate Finance Committee, are fully informed of the ramifications of the harmonized code.

Senator WALLOP. This is not a question of his, but is there an implication in your response that the independence of the ITC would inhibit the kind of reports to Congress that Congress has requested?

Mr. ECKES. No, not at all, Senator. I simply meant that the role of the ITC from its very beginnings has been a factfinding role as opposed to a role in which it seeks to make policy or propose policy. While the ITC, I believe, can outline options, it is very careful to preserve its independence and detachment from policy considerations which are clearly the prerogative of Congress, and the executive.

Senator WALLOP. Thank you very much.

I will ask your indulgence—if the committee could stand in recess on the matter of your nomination until Senator Long arrives—he has questions to direct to you.

We appreciate your courtesy in waiting. Thank you very much.

We will stand in recess until Senator Long arrives.

[Recess.]

Senator WALLOP. We will reconvene.

The other questions of the committee have been addressed to you. I would ask the minority ranking member if he would care to direct some questions or statements to you.

Senator LONG. Mr. Eckes, I see you have given quite a bit of thought to this subject. I have not had the opportunity to read them. Apparently, you have studied it at considerable depth.

Would you give me your thought about the independence or lack of independence of the Commission?

Mr. ECKES. Senator Long, that is a longstanding issue, I believe, from the very beginnings of the Tariff Commission in 1916 and 1917. As a historian, I have had a chance to go back and look at some of the activities that occurred in the 1920's, and I know from having read some of the documents, which incidentally are available in the Library of Congress manuscripts division, that no one wants to repeat the cycle of the 1920's.

To answer in more specific terms, the ITC is an independent factfinding body, and the provisions of the 1974 Trade Act strengthen that independence from the executive by extending the terms of individual commissioners and making them ineligible for reappointment, allowing the ITC to be represented by its own attorneys, and also placing its budget directly under the congressional committees. I would do everything to maintain that independence, and to preserve the traditions of the ITC in its close working relationship with the committees of Congress.

Senator LONG. Let me just pose a problem to you. From the point of view of some of those in the State Department, I guess this was Mr. Kissinger's attitude about the subject, they would like to look upon all of these matters as being foreign affairs, everything about trade being foreign affairs.

From the point of view of those who share that view, it would be worth practically any price if we could achieve peace in the world by simply making trade concessions to mollify this group or mollify that group, or make this group feel a little happier.

The real believers in free trade believe that if you were to go all the way with free trade, you can solve all the world's problems. There would be no more war. Everybody would be happy. All the good things that the Savior had in mind for us would all be brought here to Earth by just free trade. You know, there are people who believe that.

We can't get other nations to practice free trade. Lacking that, there are those who still feel that nevertheless we have enough markets that we could give all of ours away, and perhaps achieve the results, even if the others don't.

I know that you are not that impractical in your point of view, but there are some who think that trade concession is a blue chip that this Nation should be able to deal with in its foreign policy.

I have been in international conferences where the executives would be using their influence to try to achieve the purpose of the American negotiators, and I have no doubt at all that because of all that someone says, look, what is important to us is this particular matter about fish, or this matter about whatever, air rights, or goodness knows what. Those who are seeking to achieve their

objective would be very happy to achieve what they came there to accomplish by just giving away trade concessions.

I recall one conference, and that involved the Law of the Sea. The people in the fishery industry told me that the conference had to fail. They said:

> There is no way that this conference can succeed because in trying to get an agreement on a 3-mile, or 6-mile limit, the closest restriction they could get for the Navy, they are giving away more than 100 percent of all our fish. When the other nations discover that they have given away more than 100 percent of the fish, or once they start adding up how much fish they have given away, this whole thing will fail because they can't deliver.

It is sort of like a Broadway show where somebody keeps selling a piece of the action, and find out they have sold about 200 to 300 percent of the stock that they are supposed to have to the various people.

People have even done that type of thing trying to bring in an oil well. They call it pool drilling a well, then they sell a little interest here, and a little interest there to keep drilling deeper, and after a while they can't afford to bring the well in because they have sold more than 100 percent of the well.

Apparently, people have done this type of thing, and at least that is how the fishery people looked at the negotiations some years back, the negotiations on the Law of the Sea.

We just felt that the business community, and we don't think the public either, would approve of the jobs of the American people, or the investments of American business should be given away to get a vote in the United Nations, to get a vote in one of those international conferences; that to try to persuade two countries to quit fighting one another, we ought to just give away their industries, their investments, their jobs.

We felt that this being the case, the International Trade Commission should be independent, and it should look at the trade aspects of it. It should look at the laws that Congress passed, and it should not be subject to being reached by the White House, or to be directed by the State Department.

I have nothing against those people. They are doing what they think is right as the Good Lord gives them the right to see it, but that is not what the majority of the people in this country want, and that is not what we in the Congress want.

I just want to get your thought about the independence of this Commission, and how we might be able to maintain the independence of this Commission.

Mr. ECKES. I certainly understand your point of view, Senator. As I have indicated earlier, I have had a chance to study the traditions, and I am completely prepared to defend and preserve that independence. The changes in the 1974 law, I suspect, have done a great deal to institutionalize that independence.

At this point, not having served on the Commission, I am afraid I am not in a position to suggest, but maybe at some time in the future I may be able to come back and offer some more concrete suggestions, how that independence can be preserved and best used for the role you have described. It is quite clear that the independence of the Commission is something that Congress wanted from the beginning in order to insure, as Professor Frank Taussig, the

first chairman said, "the Commission would be the servants and assistants of Congress."

Senator LONG. Thank you very much.

Mr. ECKES. Thank you, Senator.

Senator WALLOP. Senator Moynihan, do you have a question?

Senator MOYNIHAN. I would like the opportunity, Mr. Chairman, to welcome a fellow Fletcher School graduate to the higher ranks of Government.

Mr. ECKES. Thank you, Senator.

Senator WALLOP. Is that anything like the trilateral commission?

Senator MOYNIHAN. It is a predecessor. It anticipates most of the grievous error which you would find in those Eastern Republicans.

It is very nice to have you here, and I am happy that you are going to take this new aspect to your career. This will be the friendliest hearing you have. You already see how friendly it is.

Mr. ECKES. Thank you.

Senator MOYNIHAN. Thank you, Mr. Chairman.

Senator WALLOP. Senator Armstrong.

Senator ARMSTRONG. No, thank you, Mr. Chairman.

Senator WALLOP. I will ask the committee to stand in recess subject to the call of the chairman on the rest of the agenda.

Thank you, Mr. Eckes, this concludes the hearings on your nomination.

[Whereupon, at 11:05 a.m., the hearing recessed subject to call of the Chair.]

SENATOR DOLE'S QUESTIONS FOR MR. ECKES AND HIS ANSWERS

Question 1. Mr. Eckes, in reading over the biographical material which you have provided the committee, it appears that in your international trade background you have not had much experience in the agricultural sector. Do you feel you will be able to develop the expertise necessary to deal with the peculiarities of the agricultural issues which will face the Commission? Have you reviewed the statutes such as section 22 of the Agricultural Adjustment Act under which agricultural issues arise? Do you understand the functioning of those statutes?

Question 2. As you know, the commission has a very unique role to play under our trade statutes. Do you understand its unique position between the Congress and the President and the independent status it has? Would you have any problem taking the steps which might be necessary to maintain the independent nature of the Commission?

Question 3. One of the problems which all independent agencies must face is budgetary restraint. Are you prepared to take the steps which are necessary to ensure that the Commission performs only its essential functions in the most efficient manner?

Answer 1. I do have some knowledge and experience in agricultural issues on which to develop a measure of expertise. For one thing, two close relatives (a grandfather and an uncle) each operated family farms, and as a child I spent many summers doing farm chores. For another, my father worked 37 years for the U.S. Department of Agriculture, and he taught me a great deal about some of the government programs in this area.

Yes, I am familiar with section 22 of the Agricultural Adjustment Act and with scholarly interpretations of this key provision. In writing this section Congress evidently was determined to make certain that the domestic price support program for farmers did not become a world price support program. Consequently, when the Secretary of Agriculture believes an article is being imported, or is likely to be imported into the United States in such quantities as to render ineffective or materially interfere with a U.S. Department of Agriculture program, he advises the President. The President may direct the International Trade Commission to conduct a fact-finding investigation, which could lead to a recommendation for import restraints.

Since the 1930's there have been more than 40 investigations under section 22, and these have led to import quotas for such products as milk, cheese, ice cream, chocolate, peanuts, and cotton.

Answer 2. Yes; I understand the I.T.C.'s unique position as an independent agency and I will work to maintain that independence.

In the mid-1970's one of my graduate students in history at the Ohio State University prepared a masters thesis on the Tariff Commission in the 1920's. This study, written by Kathleen Sherman Lowry, emphasized many of the early difficulties this agency experienced before the tradition of independence was established. More recently, while preparing for these hearings, I took the occasion to read the personal papers of Commissioner William S. Culbertson of Kansas, a member of the Tariff Commission in the 1920's. These papers, which are available to scholars in the Library of Congress Manuscript Division, provide ample evidence and a stark reminder of the problems that could emerge if the Commission's independence were jeopardized.

Answer 3. Yes.

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